

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'G' BENCH,
NEW DELHI (THROUGH VIDEO CONFERENCING]

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
SHRI AMIT SHUKLA, JUDICIAL MEMBER

ITA No. 4964/DEL/2016 [A.Y 2010-11]

Shri Sandeep Tiwari
C -22, Dronacharya Apartments
Mayur Vihar, Phase - 1, Delhi
New Delhi

Vs.

The I.T.O
Ward - 36(4)
New Delhi

PAN: AAVPT 1015 D
(Applicant)

(Respondent)

Assessee By : Shri Ruchesh Sinha, Adv

Department By : Shri Umesh Takyar, Sr. DR

Date of Hearing : 15.12.2021

Date of Pronouncement : 15.12.2021

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-

This appeal by the assessee is preferred against the order of the CIT[A]- 34, New Delhi dated 01.07.2016 pertaining to Assessment Year 2010-11.

2. The sum and substance of the grievance of the assessee is that the ld. CIT(A) erred in confirming the addition of Rs. 44,95,747/- towards capital gains earned on sale of residential plot of Gurgaon.

3. Representatives of both the sides were heard at length, case records carefully perused. Judicial decisions relied upon duly considered.

4. Briefly stated, the facts of the case are that in the computation of taxable income, the assessee has shown NIL income under the head 'Capital Gains' after claiming exemption under sections 54D/54EC/54ED at Rs. 32,28,632/- and cost of acquisition at Rs. 32,87,578/- as against sale consideration of Rs. 62,16,210/-.

5. The assessee was asked to explain the computation of income under the head 'Capital Gains' and also explain the exemption claimed under Section 54F of the Act.

6. The assessee explained that it has purchased a plot and the said plot was allotted by HUDA on 31.05.2002. The possession letter was issued by HUDA on 08.02.2006 and the possession certificate was issued by HUDA on 08.05.2006. The Assessing Officer found that the date of registered sale deed between HUDA and the assessee pertaining to the said plot of land was 15.10.2009. Since the said plot was sold on 4.11.2009, capital gain arising out of the said sale of plot was taken as short term capital gains by the Assessing Officer, thereby denying benefit of indexation and subsequent claim of exemption under section 54 of the Income-tax Act, 1961 [hereinafter referred to as 'The Act'].

7. The assessee carried the matter before the Id. CIT(A) but without any success.

8. Before us, the Id. counsel for the assessee stated that the impugned plot was allotted by HUDA on 31.5.2002 and the certificate of possession was given on 8.5.2006 which made the assessee owner of the said plot and as per the terms and as per the payment schedule, the said plot was registered on 15.10.2009, which was sold on 4.11.2009 and from the date

of allotment, period of holding is more than 36 months making the plot long-term capital asset and the gain long-term capital gain.

9. The Id. DR strongly supported the findings of the authorities below.

10. We have given careful consideration to the orders of the authorities below. There is no dispute that on 31.5.2002, the said plot was allotted to the assessee. It is also not in the dispute that the certificate of possession was given on 08.05.2006. In our considered view, the date of allotment is relevant for the purpose of computing holding period and not the date of registration of conveyance deed as held by the Hon'ble Jurisdictional High Court of Delhi in the case of K. Ramakrishnan 48 taxmann.com 55. The relevant findings read as under:

"2. In this case the relevant facts relating to the acquisition of the capital asset, i.e., the HUDA plot and its ultimate disposal of the assessee was considered by the Tribunal and discussed as follows :

"5. The Id. counsel for the assessee, on the other hand, has placed strong reliance on the impugned order. Besides addressing the oral arguments, he has also placed before us a brief written synopsis. It has been contended that the

Assessing Officer had wrongly treated the capital gain as short-term capital gain and while doing so, had erroneously taken the date of execution of the conveyance deed in favour of the assessee as the relevant date, rather than the date of allotment of the plot to the assessee by HUDA; that undisputedly, the assessee had booked the plot in question with the HUDA on 18.06.1986 and had deposited the earnest money; that the plot was allotted to the assessee on 03.08.1999; that on receipt of the allotment letter, the assessee had deposited further amounts on various dates, as given in the chart contained in the written synopsis; that by the expiry of the period of sixty days from the date of allotment, i.e., by 03.10.1999, the assessee had deposited 96% of the tentative cost of the plot; that as per the terms and conditions contained in the allotment letter, since the assessee paid the instalment as demanded by HUDA, the assessee was to become the beneficial owner of the residential plot in question; that as per clause 5 of the allotment letter, a letter of 'acceptance was to be filed by the assessee along with an amount of Rs.10,155/-, within thirty days, thereby having paid 25% of the total cost of the plot; that this amount had to be deposited by the assessee in his capacity as the owner of the plot, on allotment, which was done, as evidenced by the receipt of payment; that as per clause 11 of the allotment letter, the right of the assessee in the allotted plot was an absolute right as owner thereof; that this clause prohibited the assessee from transferring the plot except with the permission of HUDA; that this clause stated that it was till the execution of the conveyance deed, that the assessee was not to be treated as owner of the plot; that as per clause 12, execution of the conveyance deed was not made subject to the handing over of the possession of the plot; that thus, right from 1999, when the plot was allotted to

the assessee, the assessee was having absolute rights thereon; that in 'Jitender Mohan', 11 SOT 594 (Del), it has been held that it is the date of allotment which is relevant for the purpose of computing a holding period and not the date of registration of conveyance deed; that [Section 47](#) of the Registration Act lays down that registration of a document operates retrospectively; that in '[Gurbax Singh vs. Kartar Singh](#)', 254 ITR 112 (SC), it has been held that registration of a document would relate back to the date of its execution; that in '[Hamda Amla V. Avadiappa](#)' (1991), 1 SCC 715 and '[Syamla Rao vs. CIT](#)', 234 ITR 140 (A), it has been held likewise; that therefore, the Ld.CIT (A) has correctly decided the issue in favour of the assessee; and that as such, there being no merit therein, the appeal of the Department be ordered to be dismissed."

11. Respectfully following the decision of the Hon'ble Jurisdictional High Court [supra], we direct the AO to treat the gain as long-term capital gain.

12. Since we have held that capital gain arising out of sale of the said plot of land is long-term capital gain, we now remit the matter to the file of the AO to examine the claim of exemption under section 54 of the Act. The assessee is directed to furnish necessary evidence in support of his claim.

13. In the result, the appeal of the assessee in ITA No. 4964/DEL/2016 is allowed with the above directions.

The order is pronounced in the open court on 15.12.2021 in the presence of both the representatives.

Sd/-

**[AMIT SHUKLA]
JUDICIAL MEMBER**

Sd/-

**[N.K. BILLAIYA]
ACCOUNTANT MEMBER**

Dated: 15th December, 2021

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
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